

ED

Notice of Allowability

Application No.

10/626,673

Applicant(s)

TOYOSHIMA ET AL.

Examiner

Ginger T. Chapman

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to ____.
2. ☒ The allowed claim(s) is/are 1-6.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date ____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date <u>See Continuation Sheet</u> | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other ____. |

Continuation of Attachment(s) 3. Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date: 4/26/2004; 10/27/2003; 8/17/2005.

Reasons for Allowance

Claims 1-6 are allowed.

The following is an examiner's statement of reasons for allowance:

Per independent claim 1: While the prior art of record discloses various areas of and ratios between crotch widths, waist widths and fastener side flaps, none disclose or fairly suggest the diaper having fastening tape on the side edges with each side edge containing both a standing gather and a leg gather in combination with a ratio of the minimum width of the crotch section to a whole width of the longitudinal end section is from 0.30 to 0.75 and an area ratio of S1 to S2 is from 0.45 to 0.60. These features render the claimed invention non-obvious over the prior art of record. Claims 2-6 are allowable as being dependent from independent claim 1.

The criticality of such dimensions is shown in the Specification in Table 1 on page 15.

While features of diapers and their dimensions are individually disclosed in the prior art, the prior art of record does not meet the conditions as suggested in MPEP § 2132, namely:

"The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

In particular, the prior art of record does not disclose features pertaining to the specific dimensions and combination of elements required in the context of the claims.

Art Unit: 3761

The closest prior art uncovered during examination discloses the following elements:

EP 1,226,802 A1, Toyoshima et al: teaches a diaper having upstanding leg gathers formed by elastic members, a crotch portion including an absorbent assembly, a rear portion defined by an waist opening portion and an underwaist portion and a pair of fastening tapes such that there are no elastic members disposed in the area from the middle of the absorbent assembly to the vicinity of the side edges and the diaper having a width W of the area having no elastic members is at least half of the width W1 of the absorbent member and not wider than the width W1 and from 1/10 to 4/5 of a whole width W2 of a rear portion.

WO 00/53140, Okuda et al: teaches a diaper having a plurality of upstanding leg gather elastic members forming a leg gather extending along the crotch region in a widthwise direction defined as "T", the upstanding guard width, said width sectioned into a free end region, a central region and a basal end region having intervals t1, t2 and t3 therebetween such that the relationship of the upstanding guard width T and the intervals can be: $t1 + t2 + t3 \leq T$ and, $t3 \leq T/3$ and, $t1 \leq t2$ and $t3 < t1 < t2$.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ginger Chapman
Examiner, Art Unit 3761
06/04/07



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

